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No. 85-1770

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

ROBERT A. GIBSON, *et al.*,

Petitioners,

v.

AT&T TECHNOLOGIES, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION RESTATED

Whether an employee can circumvent the procedural and substantive requirements of Section 301 of the Labor Management Relations Act of 1947 by relabeling a challenge to the denial of benefits under a collective bargaining agreement as a state law tort claim, contrary to *Allis-Chalmers, Inc.* v. *Lueck*, 105 S. Ct. 1904 (1985)?

STATEMENT REQUIRED BY RULE 28.1

AT&T Technologies, Inc. is a wholly-owned subsidiary of American Telephone and Telegraph Company ("AT&T"). AT&T has no parent company. In addition to other wholly-owned subsidiaries, AT&T has ownership interests, either directly or through wholly-owned subsidiaries, in the Cuban American Telephone and Telegraph Company, Inc.; Ing. C. Olivetti and C., S.P.A.; Gold Star Fiber Optics Co., Ltd.; Western Electric Saudia Arabia, Ltd.; Gold Star Semiconductor, Ltd.; Communications Software Development, Inc.; AT&T and Philips Telecommunications, B.V.; and ShareTech, Inc.

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STATUTORY PROVISIONS:

Section 301 of the Labor Management Relations Act of 1947, 29 U.S.C. § 185(a)	*passim*

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In this case, the Court of Appeals held that an employee's claim that he was "improperly deprived" of benefits under a collective bargaining agreement arises under Section 301 of the Labor Management Relations Act of 1947 ("LMRA") and that employees cannot "evade" its requirements by "relabeling their contract claims" as a state law tort. Cert. App. 2, 4 (citation omitted). This holding is simply a correct application of the principles of *Allis-Chalmers Corp.* v. *Lueck,* 105 S. Ct. 1904 (1985), to the particular facts of this case. It presents no issue that is appropriate for review by this Court.

STATEMENT OF THE CASE

Petitioners were employed by AT&T Technologies' ("AT&T") Hawthorne Works plant in Cicero, Illinois, until each voluntarily retired in the Spring of 1983. Each was subject to a collective bargaining agreement that provides for two different kinds of benefits that are pertinent to this case. First, under the agreement, employees who, like petitioners, voluntarily terminate their employment to retire or to avoid job reassignments, wage decreases, transfers, or layoffs may obtain Supplemental Income Protection Plan ("SIPP") benefits. These SIPP benefits are available to any employee with at least twenty years of service, regardless of his or her particular level of seniority. Second, in contrast, the agreement provides that when employees with the lowest levels of seniority are involuntarily laid off, they are entitled to "layoff benefits." Under the agreement, all disputes over the interpretation and administration of these benefit provisions are subject to the contractual grievance procedures.

In March, 1983, each of the petitioners was given the right voluntarily to terminate his employment and receive SIPP benefits. Each petitioner accepted that offer. Subsequently, on June 24, 1983, AT&T announced that Hawthorne Works will eventually be closed completely. This announcement meant that, if petitioners had not voluntarily retired, each petitioner could have been laid off and entitled to layoff benefits at some future time during the phase-out of operations at Hawthorne Works. Petitioners now allege that these layoff benefits would be greater than the SIPP benefits that each has received.

After the June announcement, each petitioner filed a grievance. The grievances claimed that AT&T had not made sufficient disclosures of the possibility that Hawthorne Works would be closed at the time that SIPP benefits were offered and that this failure constituted a breach of the collective bargaining agreement. However, petitioners subsequently abandoned their

grievances[1]. No claims for layoff benefits were arbitrated—as they could have been.

In June, 1984, petitioners brought this action and raised the same claims that were the subject of the previously-abandoned grievances. Petitioners' Complaint quoted extensively from the collective bargaining agreement for ten (10) pages, alleged that AT&T had fraudulently deprived them of layoff benefits, and claimed that petitioners have a right under state tort law to recover the difference between the allegedly higher layoff benefits and the allegedly lower SIPP benefits. The District Court dismissed the action on the grounds that Section 301 of the LMRA provides the exclusive remedy for challenges to denials of such contractually-created benefits and that petitioners had

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[1]Petitioners abandoned their grievances either by failing to exhaust contractual grievance procedures or by acquiescing in their Union's refusal to take the grievances to the national grievance step of the labor agreement (applicable to SIPP grievances) or to the arbitration step (applicable to termination/layoff grievances). None of the petitioners sought to overturn the refusals of their Unions to further process the grievances by invoking the available intra-Union appeal procedures, even though these procedures could have resulted in reactivation of the grievances (R. 17 at 8–11, 15–17, 41 at 1–2).

Notably, had petitioners' Unions taken their SIPP grievances to the national level, AT&T officials with authority to resolve such grievances would have considered them and reached a decision (R. 17 at 16-17). On the same basis, had the Unions requested arbitration under the termination/layoff provisions of the contract, an arbitrator would have resolved petitioners' grievances (R. 17 at 10–11). Indeed, in a number of similar past cases, the Union exhausted these procedures and obtained relief for the affected employees (Cert. App. 11; R. 17 at 11–13).

Petitioners' Complaint in this case, however, did not join the Union as a defendant. Nor did it allege a breach of the Union's duty of fair representation. Pet. 3; R. 1, 26.

indisputably failed to comply with the requirements of Section 301.[2] The Court of Appeals affirmed.

REASONS FOR DENYING THE WRIT

Petitioners concede that the Court of Appeals applied the correct legal standards in rejecting their claim. They acknowledge (p. 7) that Section 301 of the LMRA preempts a state law claim that is "substantially dependent upon analysis of the terms of an agreement made between parties to a labor contract." *Allis-Chalmers, Inc.* v. *Lueck,* 105 S. Ct. 1904, 1916 (1985). Petitioners further acknowledge (pp. 5–6) that preemption of such claims is necessary to avoid disrupting the negotiation and administration of collective bargaining agreements and to promote the "central tenets" of our national labor laws. *Id.* at 1911–16; see *Teamsters* v. *Lucas Flour Co.,* 369 U.S. 95 (1962); cf. *Textile Workers* v. *Lincoln Mills,* 353 U.S. 448 (1957). Petitioners' sole contention, in contrast, is that the Court of Appeals erred in applying these standards and in holding that their specific state law "fraud" claim is not "independent" of the collective bargaining agreement. This claim not only is inappropriate for review by this Court, but also is frivolous.

Petitioners' claims epitomize the state law claims that are preempted by Section 301. Petitioners' claim is that AT&T improperly deprived them of the layoff benefits (provided for by

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[2]Petitioners do not dispute that they failed to comply with Section 301's six-month limitations period, *DelCostello* v. *International Brotherhood of Teamsters,* 462 U.S. 151 (1983)—as the lower courts held (Cert. App. 5, 9, 12). Petitioners also do not dispute that they failed to exhaust applicable grievance procedures, *Republic Steel Corp.* v. *Maddox,* 379 U.S. 650, 653 (1965) (Cert. App. 11); failed to exhaust available IBEW intra-union appeals procedures, *Clayton* v. *International Union, UAW,* 451 U.S. 679 (1981); and failed in their Complaint and Amended Complaint to make the requisite allegations of Union misconduct to sustain a claim based on the labor agreement against the Company, *DelCostello,* 462 U.S. at 163–65.

one section of the agreement) by failing to make certain disclosures at the time AT&T paid the SIPP benefits (provided for by a second section of the same agreement). It is a challenge to the manner in which AT&T performed an obligation to pay benefits that is created solely by the contract. As this Court held in *Allis-Chalmers,* the question of what "constitute[s] 'reasonable performance' of [such] obligations" is a question of "federal contract interpretation" that is "rooted in the expectations of the parties." *Allis-Chalmers,* 105 S. Ct. at 1913–14. Indeed, the question whether AT&T is required, "expressly or by implication," to make disclosures before paying benefits and, if so, whether that obligation was breached here, is precisely the kind of question that must be uniformly resolved and not subject to "different interpretations" in each of the 50 States. *Id.* at 1910–11, 1913; *Teamsters* v. *Lucas Flour, supra,* 369 U.S. at 103–04. This Court has thus rejected petitioners' claim (p. 8) that federal standards are inapplicable simply because they did not allege a breach of an explicit contractual obligation. *Allis-Chalmers,* 105 S. Ct. at 1913.

Furthermore, the holding of preemption was necessary to preserve the "central role" of the grievance and arbitration procedures in "our system of industrial self-government." *Allis-Chalmers* v. *Lueck,* 105 S. Ct. at 1915. Far from being remediless (compare Pet. p. 5, 9), petitioners here previously invoked the "available grievance procedures" and then inexplicably sought to "sidestep" them. *Allis-Chalmers,* 105 S. Ct. at 1916. It is a central purpose of Section 301 to prevent such forum shopping. *Id.* at 1916.

CONCLUSION

For the reasons stated, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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